

My name is Robert Wichowski. I am present as a member of the Connecticut Mortgage Bankers Association to testify against Sections 3 and 4 of SB 170, An Act Concerning the Foreclosure Mediation Program. I am a partner in the law firm of Bendett & McHugh, P.C. For thirty years we have represented mortgage servicers and lenders in Connecticut with regard to mortgage default related matters, including foreclosure actions. Our clients include most of the major mortgage servicers in the country. Our firm is recognized nationally for its expertise in mortgage foreclosure representation and our attorneys are frequent speakers at national events on mortgage foreclosure issues.

The issues we have concerning Sections 3 and 4 of SB 170 are set forth below.

Loss Mitigation Affidavit Requirement (Section 4) (set forth below)

Sec. 4. (NEW) (Effective July 1, 2016) Any loss mitigation affidavit required under the general statutes, court rule or other applicable law shall be filed not more than thirty days, but not less than ten days, before any motion for judgment of foreclosure is heard.

The legislation proposes a new requirement that Loss Mitigation Affidavit (LMA) be filed not more than thirty days but not less than ten days before the motion for judgment is heard. Pursuant to an existing Judicial Standing Order, the LMA is currently required to be filed with the court when the complaint is filed. There are three issues with this provision.

First, the affidavit is not required by the general statutes, but by a Judicial Standing Order. If the timing of the filing of the affidavit is going to be changed, it would appear that a modification of the Judicial Standing Order would be the method to accomplish this. This would allow the standing Bench-Bar Committee for Foreclosures to analyze and discuss the proposal if the judiciary thought this change was beneficial.

Second, and most importantly, the timeframe of the filing of the affidavit is not workable. It will be extremely difficult to time the filing of the affidavit to occur between 10 and 30 days before the judgment hearing. There are a number of documents necessary to obtain judgment, including without limitation, the original note, mortgage and assignments; an affidavit of debt; affidavit(s) of nonmilitary service; and an appraisal not older than 120 days and a corresponding oath of the appraiser. In addition, all defaults must be in order. Pursuant to the Rules of Practice, the filing of an appearance by a non-appearing party prior to the entry of judgment automatically opens a default for failure to appear (so late filed appearances require judgment hearings to be rescheduled).

Also, judgment motions often get postponed by our clients, or by the courts, due to a variety of reasons, including loss mitigation efforts. For these reasons, it would be extremely difficult to schedule the timing of the filing of the LMA within a 20 day window that close to the judgment hearing. This requirement would lead to multiple LMAs being required to be executed by our clients, would create a greater backlog of judgments pending with the courts, and even longer timelines than already exist. This would also lead to a clogged foreclosure docket pending with the courts, and in our opinion, a much

greater number of dormancy dismissals. In our opinion, this would also increase the number of vacant and/or abandoned properties in Connecticut, and as a result would exasperate the current blight issues facing our communities.

Under the current system, the LMA is filed with the complaint. It is then that any eligible defendant in a foreclosure action is subject to the provisions and protections of the Court-annexed foreclosure mediation program, which, with the assistance of the well-trained foreclosure mediation staff and under the supervision of the judges of the Superior Court, provides defendants in foreclosure cases with ample assurances that loss mitigation options are being fully explored.

With the current comprehensive mediation statute, and federal Consumer Financial Protection Bureau (CFPB) regulations that prohibit dual tracking (obtaining judgment when a full loss mitigation packet is under review), it seems that borrowers are well protected in Connecticut, and the harm that will be caused by the change in the timing requirements far outweighs any benefits that will be achieved.

Foreclosure By Market Sale Revision (Section 3)

This revision to the Foreclosure By Market Sale (FBMS) affidavit filing requirements have the same time frame issues that are set forth above with regard to the LMA proposal. The concerns would be identical to the LMA concerns, but the Bill as presently written requires the filing of the FBMS affidavit prior to “any motion for judgment of *foreclosure by market sale* being heard”. Since, to our knowledge, there have not been any foreclosure by market sale judgments heard by a Connecticut court, one may think this should not be an issue. However, we think there was an error in the drafting of this Section and it was intended to apply, like the LMA, to foreclosure judgments (not by market sale), since the FBMS affidavit contains information as to why a foreclosure by market sale is not being pursued. If this drafting error is corrected, the timing issues set forth with regard to the LMA would be identical for the FBMS affidavit and our comments set forth above detailing the problems with requiring the filing of the affidavit not more than thirty but not less than ten days before the judgment hearing are identical.

Conclusion

In our view the aforementioned proposals would have a devastating impact on the court docket and Connecticut foreclosure timelines.